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EXAMINER
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TRAN, HAI V

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/736,456

Applicant(s)

HUNT ET AL.

Examiner

Hai Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-85 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>All</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Claim 9 is missing from the list of claim presented. Applicant is advised to review the misnumbered claims 10-85 and renumbered accordingly.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-8, 10, 71, 73, 75-78, and 80-84 are rejected under 35 U.S.C. 102(b) as being unpatentable by Gerace (US 5848396).

Claim 1, Gerace discloses a system for adapting in real-time the content of a stream of user requested data elements (commercials, ads or advertisement) comprising:

A computer processor for processing content selection (Col. 4, lines 1-30);

Storage media for storage of data elements (commercials, ads or advertisement) functionally coupled to the computer processor (inherently must have for storing and delivering ads to users).

A streaming data delivery module functionally coupled to the computer processor, which delivers the stream of data to the user (inherently within Fig.2);

A real-time tracking module (inherently within Fig.2), which provides a 1<sup>st</sup> signal indicative of the number of users requests (Col. 5, lines 8-40);

A content selection module (inherently within Fig.2) which determines which data elements (commercials, ads or advertisement) are placed into the stream of data based upon a schedule of data elements (commercials, ads or advertisement) and the value of the 1<sup>st</sup> signal (Col. 11, lines 56-Col. 12, lines 42 and Col. 15, lines 1-45).

Claim 2, wherein the real-time data tracking module is configured to receive information about the number of request for the data stream and calculate the incremental increase or decrease of users (Col. 2, lines 35-59 and Col. 15, lines 1-45).

Claim 3, wherein the content selection module is configured to retrieve data elements (commercials or web page) from the storage, the stream of data elements (commercials or web page) having an associated nominal level, the content selection module being operable to change the content of the stream of data if the 1<sup>st</sup> signal indicates the number of request for the stream of data deviates by a

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predetermined amount from the nominal level (Col. 11, lines 65-Col. 12, lines 42 and col. 15, lines 1-45).

Claim 4, wherein the content selection module further determines which data elements (commercials or web page) are placed (replace or substitute) into the stream of data elements (commercials or web page) based on the time of day and is capable of determining whether the data elements (commercials or web page) should be an advertising element (Col. 11, lines 63-Col. 12, lines 42).

Claim 5, wherein the content selection module further determines which data elements (commercials or web page) are placed (replace or substitute) into the stream of data elements (commercials or web page) based on the time of day and is capable of determining whether the data elements (commercials or web page) should be a time-eligible forward lead content element (most favorable/interested by user; Col. 14, lines 65-Col. 15, lines 42).

Claim 6, wherein the control selection module is capable of determining whether the storage media contains time-eligible premium payment rate advertisements having associated minimum viewer levels, and of determining if the 1<sup>st</sup> signal is indicative of a viewership higher than the minimum level (Col. 12, lines 7-42);

The control selection module operable to insert the time-eligible premium payment rate advertisement into the data stream (Col. 14, lines 65-Col. 15, lines 45).

Claim 7, wherein the content selection module is capable of determining if the 1<sup>st</sup> signal is indicative of a drop in viewership and is capable of adding a time-eligible content element having a positive influence (commercials that will attract user interest) on viewership into the data stream (Col. 14, lines 65-Col. 15, lines 45).

Claim 8, wherein the content selection module is capable of determining if the 1<sup>st</sup> signal is indicative of an increase of viewership over the nominal level and is capable of adding time-eligible premium advertising data elements (commercials belong to the same category) to the data stream (Col. 15, lines 1-Col. 16, lines 18).

Claim 10, Gerace discloses a method of adapting the content of a data stream in real-time containing user requested data elements comprising:

Tracking the number of requests for the data elements (commercials or web page) (Col. 5, lines 8-15);

Changing content of the data stream if the number of user requests falls below a predetermined level (Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44).

Claim 71, Gerace discloses a method for increasing audience for media content, wherein the media content comprises content elements (Col. 19, lines 60-65), comprising:

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Monitoring previous audience response to a content element (Col. 5, lines 8-15);

Determining whether to include the programming element in an imminent transmission based on the monitoring and reflecting results of the determining in the imminent transmission (Col. 17, lines 10-18 and Col. 18, lines 1-27).

Claim 73, Gerace further discloses monitoring current audience characteristics (Col. 5, lines 8-15; Col. 6, lines 58-65+).

Claim 75, Gerace further discloses wherein the content element corresponds to a programming element, the method further comprising assigning a favored lead status to the programming element based on favorable audience response (Col. 14, lines 65-Col. 15, lines 45), wherein the determining corresponds to resolving to include the programming element in the imminent transmission when audience level is high based on the favored lead status (Col. 19, lines 65-Col. 20, lines 11).

Claim 76, Gerace further discloses wherein the content element corresponds to an advertising element, wherein the monitoring corresponds to detecting an unfavorable audience response (Col. 14, lines 65-Col. 15, lines 45), and wherein the determining corresponds to resolving not to include the advertising element in the imminent transmission based on the unfavorable audience response (Col. 18, lines 1-10).

Claim 77, Gerace further discloses wherein the disfavored advertising element has an associated sponsor, wherein the imminent transmission corresponds to a next available spot for the associated sponsor, and wherein the reflecting corresponds to replacing the disfavored advertising element with an advertising element of the associated sponsor that is not disfavored (Col. 18, lines 1-26).

Claim 78 is analyzed with respect to claim 71.

Claim 80, Gerace further discloses wherein a portion of the advertising element has a condition associated with satisfactory delivery (Col. 12, lines 23-42), and wherein the determining corresponds to detecting whether the condition met (Col. 12, lines 57-Col. 13, lines 33).

Claim 81, Gerace further discloses wherein the delivering corresponds to delivering an advertising element included in the portion only if the condition met (Col. 15, lines 1-45).

Claim 82, Gerace further discloses wherein the delivering corresponds to delivering an advertising element not included in the portion if the condition is not met (Col. 15, lines 1-45).



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Claim 83, Gerace further discloses wherein at least one advertising element is a premium advertising element compared to at least one other non-premium advertising element (Col. 19, lines 35-41), wherein the monitoring corresponds to detecting a current audience level, and wherein the determining corresponds to resolving the include the premium advertising element in the imminent transmission in favor of the non-premium advertising element when the current audience level is high (Col. 19, lines 19-32).

Claim 84, Gerace further discloses wherein the monitoring occurs in real time (Col. 5, lines 8-40 and Col. 15, lines 25-45), and wherein the determining is based on audience characteristics proximate in time to the delivery (Col. 4, lines 30-35 and Col. 18, lines 1-15).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozer et al. (US 6708335) in view of Gerace (US 5848396).

Claim 11, Ozer discloses a method of adapting the content of a stream to a user containing data elements (commercials) of data segments (video programs) that are requested by a plurality of users (see Fig. 4) comprising:

Providing a data structure containing transmittable data segments (EPG containing video programs; see Fig. 4).

Providing a 1<sup>st</sup> modifiable program schedule which lists a nominal viewership level (Initially, the system provide a default EPG according to a default profile for all subscribers), and the order and time of transmission of the transmittable data segments to be transmitted (inherently the EPG contains order and time of video programs will be broadcasted);

Ozer does not specifically disclose a 1<sup>st</sup> property which is a function of the requests by the users of the data elements (commercials) and Modifying the 1<sup>st</sup> modifiable program schedule (current EPG) if the 1<sup>st</sup> property is a predetermined amount from nominal viewership level. However, Ozer discloses the EPG is updated/modified with advertisement according to the user profile/behavior that periodically transmitted back to the headend (Col. 13, lines 35-65+).

Gerace discloses determining a 1<sup>st</sup> property (number of hits/number of click), which is a function of the requests by the users of the data and based elements/commercials/advertisements (Col. 5, lines 25-40); Modifying the assembled page/screen view/agate information at the server if the 1<sup>st</sup> property is a predetermined amount from nominal viewership level (Col. 14, lines 65-Col. 15, lines 44 and Col. 17, lines 1-17). Therefore, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to modify Ozer with Gerace so to enables sponsors to better direct their advertisements and enables advertisements to be tailored to target users in real-time (Col. 4, lines 30-35).

Claim 12, Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the property is a function of the number of requests by the users of the data elements (advertisements) within a given time period (beginning and ending dates and times of the ad/ad series; Col. 12, lines 35-40).

Claim 13, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data segments (video program/programming) wherein the 1<sup>st</sup> property is indicative of the locale of the requests by the users (Gerace' s demographic; Col. 6, lines 1-10; Col. 13, lines 3-5; Col. 15, lines 5).

Claim 14, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> property is indicative of the Internet domain type of the users (the Internet domain type of the user is inherently met because each time the user log on the Internet through a ISP, the User is automatically assigned to ISP Internet domain type in which the user is logged on; Gerace Col. 4, lines 1-5; lines 65-Col. 5, lines 15).

Claim 15, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> modifiable program schedule list in a 1<sup>st</sup> location a 1<sup>st</sup> advertisement data segment, having a 1<sup>st</sup> value which is capable of being compared to the 1<sup>st</sup> property; and further includes the step of removing 1<sup>st</sup> advertisement data segment from the 1<sup>st</sup> modifiable program schedule if the 1<sup>st</sup> property is below the 1<sup>st</sup> value (Gerace; Col. 14, lines 24-Col. 17, lines 17 and Col. 18, lines 1-26).

Claim 16, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (commercial) wherein the data structure containing transmittable data segments contains a 1<sup>st</sup> advertisement data segment listed in the 1<sup>st</sup> modifiable program schedule, having a 1<sup>st</sup> value which is capable of being compared to the 1<sup>st</sup> property further includes the step of removing 1<sup>st</sup> advertisement data segment from the data structure if the 1<sup>st</sup> property is a predetermined amount from the 1<sup>st</sup> value (Gerace; Col. 11, lines 24-Col. 12, lines 55).

Claim 17 and 18, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) further including the step of listing a 2<sup>nd</sup> data segment in the 1<sup>st</sup> location of the 1<sup>st</sup> modifiable program schedule (reads on the EPG/agate is updated based on viewer behavior; see Ozer Fig. 5A; Col. 13, lines 49-65 and Gerace Col. 4, lines 1-30).

Claim 19, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> modifiable program schedule lists a 2<sup>nd</sup> data segment (EPG/agate lists a plurality of video programs/programming) and wherein the 1<sup>st</sup> property is at least predetermined amount from the nominal viewership level (new viewer with a default viewership level; Gerace Col. 4, lines 1-10; Col. 13, lines 36-Col. 14, lines 3); and further including the step of inserting a 1<sup>st</sup> advertisement data segment into the modifiable program schedule after the 2<sup>nd</sup> data segment (reads on each video program/programming content is associated with a corresponding advertisement; see Ozer Col. 12; lines 24-53).

Claim 20, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> modifiable program schedule (EPG/agate) list a 2<sup>nd</sup> data segment (video program/programming) and further including the step of inserting the 1<sup>st</sup> advertisement data segment into the stream of data if the 1<sup>st</sup> property is above a predetermined amount from the nominal viewership level (Gerace; Col. 14, lines 50-Col. 15, lines 45).

Claim 21, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) further

including the steps of providing a 2<sup>nd</sup> modifiable program schedule which list the order and time of transmission of a transmittable data segments to be transmitted in a second stream of data (Gerace; Col. 4, lines 23-30);

Determining a 1<sup>st</sup> property of the requests by users of the 1<sup>st</sup> stream of data (advertisement); modifying the 2<sup>nd</sup> modifiable program schedule if the 1<sup>st</sup> property (the # of user request) is a predetermined amount from the nominal viewership level (Gerace; Col. 12, lines 32-34).

Claim 22, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) further including the steps of providing a 2<sup>nd</sup> modifiable program schedule, which lists the content of a second modifiable stream the transmittable data segments (Gerace; Col. 4, lines 22-30);

Modifying the 2<sup>nd</sup> modifiable stream of data segments (video program/programming) if the 1<sup>st</sup> property falls below a predetermined value (Gerace; Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44).

Claim 23, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the steps of modifying the 2<sup>nd</sup> modifiable stream the transmittable data segments (video program/programming) includes inserting a 1<sup>st</sup> advertisement data segment into the stream of transmittable data (Gerace Col. 14, lines 65-Col. 15, lines 47).

Claim 24, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) further including the steps of providing a 2<sup>nd</sup> modifiable program schedule which lists the content of a 2<sup>nd</sup> modifiable stream the transmittable data segments (video program/programming) (Gerace; Col. 4, lines 22-30);

Modifying the 2<sup>nd</sup> modifiable stream of data segments (video program/programming) if the 1<sup>st</sup> property falls below a 1<sup>st</sup> determinable value (Gerace; Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44).

Claim 25, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> property is a function of the number of requests by the users of the data elements within a given time period (Gerace; Col. 12, lines 43-50 and Col. 15, lines 1-45).

Claim 26, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data (advertisement) wherein the 1<sup>st</sup> property is a function of the local (demographic) of the requests by the users (Gerace; Col. 15, lines 1-45).

Claim 27, Ozer in view of Gerace further discloses the method of adapting in real-time the content of a stream of user requested data wherein the 1<sup>st</sup> property is

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indicative of the domain type of the users (the Internet domain type of the user is inherently met because each time the user log on the Internet through a ISP, the User is automatically assigned to ISP Internet domain type in which the user is logged on; Gerace Col. 4, lines 1-5; lines 65-Col. 5, lines 15).

3. Claims 28-35 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozer et al. (US 6708335) in view of Gerace (US 5848396), and further in view of Brandt et al. (US 6701355).

Claim 28, an apparatus for adapting the content of a stream of user requested data elements is analyzed with respect to method claim 11 in which Ozer in view of Gerace further discloses

A computer processor for processing content selection (Ozer; Fig. 5A and Gerace; Fig. 2).

A storage media for storing data elements (advertisement) functionally coupled to the computer processor (Ozer; Fig. 5A; Col. 3, lines 45-55 and Gerace; Fig. 2);

A data stream delivery module functionally coupled to the computer processor, which delivers the stream of data to the user (Ozer Fig. 5A and Gerace Fig. 2);

A tracking module (inherently within Fig.2), which provides a 1<sup>st</sup> signal indicative of the number of user requests within a predetermined time interval (Gerace; Col. 12, lines 8-42);



A content selection module (inherently within Fig.2) which determines which data elements (commercials, ads or advertisements) are transmitted in the stream of data based upon a schedule of data elements (commercials, ads or advertisements) and the value of the 1<sup>st</sup> signal within the predetermined time interval (Gerace; Col. 5, lines 15-26; Col. 7, lines 23-38; Col. 12, lines 23-50; Col. 15, lines 1-45).

Ozer in view of Gerace does not clearly disclose a timing element (advertising schedule) that defines a predetermine time interval based upon the size of a transmitted data element (advertisement);

Brandt discloses an ad schedule (Col. 31, lines 24-32) for inserting ads based on the predetermine time interval (duration/length) of the ad (Col. 33, lines 1-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ozer in view of Gerace with Brandt so to provide a method for dynamically substituting broadcast material by providing enhanced features for delivery of broadcast material to users (Col. 3, lines 10-25).

Claim 29, Gerace further discloses wherein the data tracking module is configured to calculate intermittent increase or decrease in users within the predetermined time interval (Col. 2, lines 35-59 and Col. 15, lines 1-45).

Claim 30, Gerace further discloses wherein the content selection module is capable of retrieving data elements (advertisement) from the storage media, the stream of user registered data having an associated nominal level, the content

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selection module being operable to change the content of the stream of data if the 1<sup>st</sup> signal is indicative of a number of requests for the stream of data is a predetermined amount from the nominal level (Col. 11, lines 65-Col. 12, lines 42 and col. 15, lines 1-45).

Claim 31, Gerace further discloses wherein the data elements are comprised of a second set of data elements having an associated second value indicative of the time of day (Col. 11, lines 63-Col. 12, lines 42).

Claim 32, Gerace further discloses wherein a 3<sup>rd</sup> set of data elements having a 3<sup>rd</sup> associated value indicative of a minimum required viewership level (Col. 12, lines 7-42).

Claim 33, Gerace further discloses wherein the data elements are comprised of a 4<sup>th</sup> set of data elements having an assigned value indicative of a favored lead element (most favorable/interested by user; Col. 14, lines 65-Col. 15, lines 42).

Claim 34, wherein the data elements are comprised of a 5<sup>th</sup> set of data elements having an assigned value indicative of a public service announcement (Brandt; Col. 33, lines 15-20 and Col. 34, lines 10-13).

Claim 35, Gerace further discloses wherein the data elements are comprised of a 6<sup>th</sup> set of data elements having a 6<sup>th</sup> variable indicative of a local flag (Flag set for local weather; Col. 16, lines 54-55; Col. 21, lines 29-40).

Claim 37 is analyzed with respect to claim 28.

Claim 38 is analyzed with respect to claim 31.

Claim 39 is analyzed with respect to claim 32.

Claim 40 is analyzed with respect to claim 34.

4. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace (US 5848396) in view of Brandt et al. (US 6701355).

Claim 36, Gerace discloses a method of adapting the content of the stream of data containing user requested data elements comprising:

Tracking the number of user requests for the data elements (Col. 5, lines 8-40);

Changing the content of the data stream fully within the predetermined time interval if the number of user requests falls below the predetermined levels (Col. 2, lines 35-59; Col. 11, lines 56-Col. 12, lines 42 and Col. 15, lines 1-45).

Gerace does not clearly disclose Establishing a predetermine time interval based upon the size of a the data element (advertisement);

Brandt discloses an ad schedule (Col. 31, lines 24-32) for inserting ads based on the predetermine time interval (duration/length) of the ad (Col. 33, lines 1-45).

Therefore, it would have been obvious to one of ordinary skill in the art at the time

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the invention was made to modify Gerace with Brandt so to provide a method for dynamically substituting broadcast material by providing enhanced features for delivery of broadcast material to users (Col. 3, lines 10-25).

5. Claims 41-61 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (US 6486892) in view of Gerace (US 5848396).

Claim 41, Stern (Col. 7, lines 35-60) discloses a system for controlling content delivery to an audience using a concurrent delivery system that delivers content to at least a 1<sup>st</sup> portion of the audience over a channel-tuned broadcast spectrum (non-web related information) and to at least a second portion of the audience over an addressable network using an Internet protocol (Web related information). Stern further discloses the content delivery system (Fig. 1, el. 8) has access to a plurality of content elements 10-13.

Stern does not disclose an audience interaction monitor system that monitors the addressable network (Internet network) and generate at least one audience metric corresponding to usage by the 2<sup>nd</sup> portion of the audience (Web users) and the content delivery system being controlled by the audience interaction monitor system and being operative to actively deliver selected content elements (advertisement) to the 1<sup>st</sup> and 2<sup>nd</sup> portions of the audience based on the at least one audience metric.

Gerace discloses an audience interaction monitor system (Fig. 2) that monitors the addressable network (Internet network) and generate at least one

audience metric corresponding to usage by the 2<sup>nd</sup> portion of the audience (Web users) and the content delivery system being controlled by the audience interaction monitor system and being operative to actively deliver selected content elements (advertisement) to the 1<sup>st</sup> and 2<sup>nd</sup> portions of the audience based on the at least one audience metric (Col. 4, lines 1-36; Col. 11, lines 45-Col. 12, lines 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stern with Gerace so to provide to user agate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Claim 42, Gerace further discloses wherein the audience monitor stores historical data reflecting the usage by the 2<sup>nd</sup> portion of the audience (Internet audience; Fig. 2, el. 73; Col. 4, lines 37-47).

Claim 43, "wherein the audience metric is an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the audience" is further met by Gerace because Gerace ' s the format of the media schedule page also includes one table for television listing for each TV program for user to select for viewing (Col. 10, lines 12-18). Thus , the audience metric disclosed by Gerace is also applicable to an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the audience (Non-Internet audience).

Claim 44, since the audience metric disclosed by Gerace is also applicable to an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the

audience; therefore, Gerace 's audience metric is also a surrogate metric characterizing the aggregate of the 2<sup>nd</sup> portion of the audience (Internet audience).

Claim 45, see analysis of claim 2.

Claim 46 , Gerace further discloses wherein the audience metric reflects usage as a function of time (Col. 15, lines 1-25).

Claim 47, Gerace further discloses wherein the audience metric reflects usage associated with at least one content element (Col. 15, lines 1-25).

Claim 48, Gerace further discloses wherein the content delivery system includes an automated decision system having an associated set of business rules used in conjunction with the audience metric to select content elements for delivery (Col. 15, lines 25-45).

Claim 49, Gerace further discloses wherein the business rules are configured to maximize the audience (Col. 15, lines 25-45).

Claim 50, Gerace further discloses wherein the business rules are configured to maximize audience for selected content elements (Col. 15, lines 25-45).

Claim 51, Gerace further discloses wherein the business rule are configured to maximize audience for selected content elements by temporally placing the selected content elements after other content elements having an associated audience metric above a predetermined level (Col. 18, lines 1-27).

Claim 52, Gerace further discloses wherein the business rule reflects contract-specified monetary values associated with at least a portion of the content elements (Col. 19, lines 37-40).

Claim 53, Gerace further discloses wherein the business rules are configured to use the monetary values to maximize advertising profits (Col. 19, lines 37-40-65).

Claim 54, Gerace further discloses wherein the audience interaction monitor system captures location information about members of the 1<sup>st</sup> portion of the audience (Col. 6, lines 5-8; Col. 16, lines 30-36 and Col. 22, lines 44-48).

Claim 55, Gerace further discloses wherein the audience interaction monitor system captures location information about members of the 1<sup>st</sup> portion of the audience and wherein the content delivery system delivers content to the 2<sup>nd</sup> portions of the audience selectively based on the location information (col. 21, lines 29-40).

Claim 56, Gerace further discloses wherein at least a portion of the content elements corresponds to a contractual relationship between a broadcasting entity and an advertising entity and wherein the contractual relationship has contractual terms that depend upon the at least one audience metric (Col. 19, lines 37-40).

Claim 57, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity based at least in part on the at least one audience metric (Col. 19, lines 37-40).

Claim 58, Gerace further discloses wherein the contractual terms specify favored lead content elements and provide for the delivery of such favored lead content elements under predefined conditions (Col. 19, lines 65-Col. 20, lines 11).

Claim 59, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to refrain from delivering content

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elements when audience levels are below specified levels (Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44).

Claim 60, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to selectively deliver predetermined content elements when audience level are above specified level (Col. 15, lines 1-45 and Col. 18, lines 1-27).

Claim 61, Gerace further discloses wherein the contractual terms associate a plurality of advertising content elements with the advertising entity and further provide monetary incentive to the broadcasting entity to preferentially broadcast selected one of the advertising content elements based on accumulated empirical information on audience level gains and losses associated with such advertising content elements (Col. 18, lines 50-Col. 20, lines 11).

Claim 85 is analyzed with respect to claim 41.

6. Claims 62-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al (US 6459427) in view of Gerace (US 5848396).

Claim 62, Mao discloses a method for adjusting media content transmitted to an audience (Col. 3, lines 5-30) comprising;

Simulcasting the media content to the audience (audience selects broadcast) and to a surrogate audience (audience selects simulcast; Col. 7, lines 5-18);



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Mao does not clearly disclose "monitoring at least one of response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring." However, Mao discloses HTML based webcasting content may be customized based on each consumer' individual profile and viewing time (Col. 4, lines 50-53).

Gerace discloses monitoring at least one of response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring (Col. 4, lines 1-36; Col. 11, lines 45-Col. 12, lines 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao with Gerace so to provide to user agate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Claim 63, Gerace further discloses wherein the monitoring substantially occurs in real time (Col. 5, lines 8-40);

Claim 64, Gerace further discloses wherein the adjusting substantially occurs in real time (Col. 4, lines 30-35).

Claim 65, Mao further discloses wherein the simulcasting correspond to Performing at least one of a traditional broadcast 30 and traditional narrowcast,

wherein the media content is distributed to members of the audience via at least one of airwave and cable (Fig. 1); and

Performing at least one of a streaming broadcast 40,110 and a streaming narrowcast via Internet technology (Fig. 1,2), wherein streaming media content is distributed to a member of the surrogate audience in response to a stream request (Col. 7, lines 27-63).

Claim 66, Gerace further discloses wherein the monitoring corresponds to measuring media content consumption of a surrogate audience member (Col. 5, lines 26-40 and Col. 12, lines 65+).

Claim 67, Gerace further discloses wherein the measuring occurs relative to geographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 68, Gerace further discloses wherein the measuring occurs relative to demographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 69, "wherein the measuring occurs relative to domain type of the surrogate audience member" is further met by Gerace because the User is automatically assigned to ISP Internet domain type every time the user log on the Internet through his Internet Service Provider; see Gerace Col. 4, lines 1-5; lines 65-Col. 5, lines 15.

Claim 70, Gerace further discloses wherein the media content is defined in terms of content elements (advertisements), and wherein the adjusting corresponds to assigning a status to a content element based on the monitoring (Col. 15, lines 1-45);

Determining whether to include the content element in an imminent transmission based on the assigned status and reflecting results of the determining in the imminent transmission (Col. 17, lines 10-18 and Col. 18, lines 1-27).

7. Claims 72, 74 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace (US 5848396) in view of Mao et al (US 6459427).

Claim 72, Gerace further discloses deeming of the surrogate audience is representative of the response of the audience (Col. 4, lines 30-47).

Gerace does not clearly disclose simulcasting the media content to an audience and a surrogate audience.

Mao discloses simulcasting the media content to an audience and a surrogate audience (Col. 2, lines 23-65+). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gerace with Mao so consumer can access from one of the service , i.e., broadcast, simulcast, at any given time (Col. 7, lines 5-15).

Claim 74, Mao further discloses monitoring current audience characteristics, and Deeming that the audience characteristics of the surrogate audience are representative of the audience characteristic of the audience (Col. 3, lines 25-29; Col. 4, lines 40-52).

Claim 79 is analyzed with respect to claim 72.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is 703-308-7372. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER